But in these cases the Supreme Court has clearly shown its intention to uphold a law in spite of the great weight of other authority, where it is in any way possible to find a reasonable ground for so doing. Viewed in that light, the decision seems proper.

E. E.

CONTRACTS—VALIDITY—OUSTING THE JURISDICTION OR LIMITING THE POWER OF THE COURTS—It is universally conceded that parties to a contract may stipulate in many ways the rules of law for any legal proceedings to which they may become parties, which not only will bind them, but which the courts are bound to enforce.[1] Thus an agreement that a period less than that fixed by the statute of limitations shall be a bar to any action springing from the contract is valid.[2] Also that the action is not pursued in the particular way provided by the agreement of the parties is a valid defence to a suit at law brought in a different manner.[3]

But although the courts will allow this limited interference with their jurisdiction, they will not give validity to a contract that provides that neither party shall resort to the courts.[4] In *Doyle* v. *Insurance Company*,[5] the Supreme Court of the United States refused to sanction a contract to refrain from resorting to the courts of the United States.

The question then arises: Will the courts sustain an agreement to sue in only one certain court? This question has been answered in the negative in the recent case of *Nashua River Paper Company* v. *Hammerville Paper Company*,[6] where the Supreme Court of Massachusetts held that a stipulation in the contract that no action should be maintained under the contract in any state court or federal court other than the state court of Pennsylvania, was unenforcible and would not preclude the maintenance of an action in Massachusetts. The argument to sue in only a certain court is a stipulation concerning the remedy, which is created and regulated by law and therefore cannot be changed by the parties.

Although this mode of reasoning causes no difficulty when ap-

as having the seduction and evil of such, and whether it has may be a matter of inquiry, a matter of inquiry and of judgment that it is finally within the power of the legislature to make." *Per* McKenna, J.

[1] Matter of N. Y. R. R. Co., 98 N. Y. 447 (1885).

[2] Brown v. Insurance Co., 24 Ga. 97 (1858).

[3] Insurance Co. v. Candle Co., 31 Pa. 448 (1855).

[4] Knorr v. Bates, 35 N. Y. Supp. 1060 (1895).

[5] 94 U. S. 535 (1876).

[6] 111 N. E. 678 (Mass. 1916).

plied to the facts of the particular case, at first glance, it seems to raise a serious doubt as to the soundness of those decisions which uphold a stipulation that disputes arising on a contract shall be referred to an arbitrator, whose decision shall be final. As the right to sue in any court is a question of remedy, it is submitted that the right of going before an arbitrator is also a question of remedy. But a close survey of the cases will show that the apparent inconsistency does not exist. While as a general rule courts may be said to enforce an agreement to refer to arbitrators yet they will not enforce the contract unless the dispute refers only to questions of fact.[7] If the stipulation is that disputes as to questions of law, or as to the legal rights of the parties under the contract, shall be submitted to a referee, it is invalid.[8] As courts of law determine the legal rights of the parties as well as the questions of fact, it may be readily seen that a contract to sue in only a certain court is in effect an agreement to refer all questions of law to a certain arbitrator.

It is firmly settled in Pennsylvania that agreements to refer disputes of facts to arbitrators will be upheld, provided the power to pass upon the subject matter in dispute, is clearly given to the arbitrator by the terms of the agreement.[9] In *Ruch* v. *York*,[10] Mr. Justice Mestrezat said, "the parties to a building contract may legally provide therein that disputes arising out of the contract shall be submitted for decision to the architect, and that his conclusion or judgment shall be a final adjudication of the questions submitted. Such submission may include the power to determine the right of the parties to liquidated damages under the terms of the contract."

From this broad language it would seem that the parties to a contract may waive all right of action respecting any dispute which may arise and thereby accomplish the complete abrogation of the authority of the courts. In none of these cases, however, was the court asked to enforce an agreement to arbitrate a dispute involving a question of law. Moreover in the earlier case of *Mentz* v. *Insurance Company*,[11] Mr. Justice Sharswood said, "It is not in the power of the parties to a contract to oust the courts of their jurisdiction. The arbitrator cannot be made a judge of law and facts."

From this apparent conflict of opinion it is difficult to deduce any distinctly established rule in Pennsylvania upon the subject. It is submitted, however, that if in enforcing a contract to refer to

[7] Sanitary Dist. v. McMahon, 110 Ill. App. 510 (1903); Hager v. Shuck, 120 Ky. 574 (1905).

[8] Bannon v. Jackson, 121 Tenn. 381 (1908); Barlow v. United States, 184 U. S. 123 (1901).

[9] Reilly v. Rodef Sholem Congregation, 243 Pa. 528 (1914).

[10] 233 Pa. 36 (1912).

[11] 79 Pa. 478 (1875).

arbitration a question of law is squarely brought before the Supreme Court of Pennsylvania, it will follow the opinion of Justice Sharswood and refuse to give validity to such an agreement.[12]

G. F. D.

COURTS—JURISDICTION IN MOOT CASES—While the general principle that courts should refuse to assume jurisdiction in moot cases has long been recognized,[1] little attention has been given to the formulation of rules for determining whether or not a given case is moot within the rule. This is due perhaps to the fact that the refusal of the court to assume jurisdiction in such a case is entirely discretionary, there being no legal prohibition against the decision of such an issue, and also to the further circumstance that the very nature of the subject necessitates to a great extent the decision of each case upon its peculiar facts, and to some degree minimizes the value of precedent. The courts have, however, in the absence of any legal obligation, refrained from deciding such cases with remarkable uniformity, and from their opinions a few general principles may be collected.

At the beginning, moot cases fall into two natural classes. The first class includes those cases in which the situation upon which the court is asked to give an opinion is a purely fictitious or hypothetical one, in the sense that it at no time existed in actuality. In the second group are those cases where facts raising an issue entirely proper for decision existed when the suit was commenced, but where it appears, upon the decision of the case on appeal, that by the alteration or discontinuance of the situation upon which the issue was founded, the case, once real, has become moot.

Under the first group are those cases in which a mere colorable dispute is created between parties whose interests are not adverse, to obtain the opinion of the court upon a question of law which it is to their interest to know,[2] and also those in which an issue equally fictitious is based upon an assumed breach of an existing contract or an assumed contest of a will.[3] While it has been urged in such cases that the instrument as an existing document should be construed it seems clear that so long as the issue itself is fictitious the fact that documents upon which it is based may have

[12] This was so held by the Circuit Court for the Eastern District of Pennsylvania in Mitchell v. Dougherty, 90 Fed. 639 (1898).

[1] Cox v. Phillips, Lee Temp. Hardwicke 237 (1736); Lord v. Veazie, 8 How. 251 (U. S. 1850).

[2] Smith v. Junction Rwy. Co., 29 Ind. 546 (1868).

[3] Collins v. Collins, 19 Ohio St. 468 (1869), the court refused to construe a will where no trust was involved. In New Orleans, *etc.*, Rwy. v. Linehan Ferry Co., 104 La. 53 (1900), the court refused to construe a contract until an actual issue should arise.